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TRANSMITTAL SLIP	DATE
TO: John Warner	
ROOM NO.	BUILDING 7 D 01
REMARKS:	

JFK ACT RELEASE

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FROM:	Joseph C. Goodwin Assistant to the Director	
ROOM NO.	BUILDING	EXTENSION

FORM NO 1 FEB 55 241 REPLACES FORM 36-8 WHICH MAY BE USED. (47)

OGC 68-1919

1 October 1968

MEMORANDUM FOR: Mr. Warner

SUBJECT: Libel Suit

1. This is in answer to your question of whether or not the Director of Central Intelligence could institute a libel suit against Mark Lane or other authors of slanderous articles attributing responsibility to CIA for the assassination of President John F. Kennedy, Dr. Martin Luther King, Jr., and Senator Robert F. Kennedy. The United States Supreme Court in New York Times Company v. Sullivan stated, "The Constitutional guarantees require, we think, a Federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'-- that is, with knowledge that it was false or with reckless disregard of whether it was false or not." 11 L.Ed. 2d, 686, p. 706 (9 March 1964)

2. The opinion of Mr. Justice Brennan cites the Virginia Resolutions of 1798 in which it "doth particularly protest against the palpable and alarming infractions of the Constitution in the two late cases of the Alien and Sedition Acts." The report prepared by James Madison stated that the Constitution created a form of government under which "the people, not the government, possess the absolute sovereignty." It went on to state that this form of government was "altogether different" from the British form under which the Crown was sovereign and the people were subjects. While the Sedition Act was never tested in the Supreme Court, all fines levied in its prosecution were repaid by an act of Congress on the ground that it was unconstitutional (Act of 4 July 1840).

3. While the malicious vindictiveness of the Mark Lane article could be construed to fall within the framework of malice as required by the Supreme Court, it should be borne in mind

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that the evidence required to prove this malice would involve the exposure of operational sources and methods of the Central Intelligence Agency. As an example, attached are two clippings showing the type of testimony and cross-examination to which both Senator and Mrs. Goldwater were subjected to in their libel suit against Ralph Ginzburg, editor of Fact Magazine.

4. The Sullivan case cited above resulted from the Commissioner of Police in Birmingham, Alabama, filing suit against the New York Times Company for having printed an advertisement which allegedly discredited the Birmingham Police Department. This particular suit was brought under an Alabama statute. It should be noted that there is no corresponding Federal criminal statute for libel and the actual proving of damages would be rather complex. In conclusion, therefore, while such articles are false and irritating, it would appear that to attack the authors in a court suit would give them additional publicity unworthy of their ilk.

JOHN K. GREANEY
Assistant General Counsel

Attachments

OGC:JKG:bt
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